

17429 Boyle
90
17429



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Propriety of GSA Contract Award]

FILE: B-202239

DATE: March 23, 1981

MATTER OF: General Services Administration--
request for advance decision

17

DIGEST:

Where invitation for bids--restricted to total labor surplus area set-aside concerns--(1) contemplates multiple awards for items and subitems to be shipped to certain destinations, and (2) discloses specific award selection method by groups of required items and subitems, apparent low bidder on 23 subitems is entitled to consideration for award on all subitems because it agreed to perform more than 50 percent of contract or award price in labor surplus area.

The General Services Administration, Federal Supply Service (GSA), requests our decision on the propriety of an award to the Davis Walker Corporation under invitation for bids (IFB) No. 8FCB-B3-80087 for fence stays, fencing, woven wire, and other wire.

The procurement was a total labor surplus area set-aside. The IFB announced that bids were solicited from concerns that would agree to perform substantially in labor surplus areas, meaning "that the costs incurred on account of manufacturing, production, or appropriate services in labor surplus areas exceed 50 percent of the contract price." The IFB called for prices on 15 items; where delivery of an item to more than one destination was required, the IFB called for subitem prices corresponding to certain destinations. The IFB also divided the 15 items into 5 groups and the IFB disclosed how award would be made in each group.

~~016060~~ 114667

Davis Walker submitted the low price on 23 sub-items; however, it proposed to perform the work regarding 6 subitems in nonlabor surplus areas. Davis Walker's bid reveals that the amount of labor surplus area work is \$1,067,417.84 and the amount of nonlabor surplus area work is \$438,353.31.

Davis Walker contends that since more than 50 percent of the contract price would be performed in a labor surplus area, it is entitled to award for all 23 subitems on which it submitted the low price. GSA questions whether the Davis Walker view is contrary to the spirit and intent of the IFB's labor surplus area provision and requests our advance decision.

A summary of the relevant IFB provisions and the Davis Walker bid follows.

	<u>Destination</u>	<u>Low bid by Davis Walker</u>	<u>Work to be per- formed in labor surplus area</u>
<u>Group A</u>			
Item 1	C. Denver	*	*
	H. Stockton	*	*
	I. Auburn	*	*
Item 2	C. Denver	*	*
	H. Stockton	*	*
	I. Auburn	*	*
Item 3	C. Denver	*	*
	H. Stockton	*	*
	I. Auburn	*	*
Item 4	C. Denver	*	*
	H. Stockton	*	*
	(The IFB had no destination I for this item.)		

Award will be made in the aggregate by destination for Items 1 thru 4.

B-202239

3

Group B

Item 5	H. Stockton	*
Item 6	H. Stockton	*
	I. Auburn	*

Award will be made in the aggregate by destination for Items 5 and 6.

Group C

Item 7	C. Denver	*	*
	H. Stockton	*	*
	I. Auburn	*	
Item 8	C. Denver	*	*
	H. Stockton	*	*
	I. Auburn	*	
Item 9	C. Denver	*	*
	H. Stockton	*	*
	I. Auburn	*	

Award will be made on an item-by-item-by-destination basis for Items 7 thru 9.

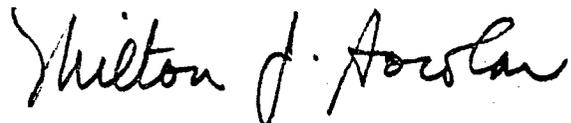
Note: * means that Davis Walker submitted the low bid and proposed to perform the work in a labor surplus area.

We note that the method of award provision of the IFB (paragraph R8-300A (5/75)) states that award would be made as specified in the schedule of items in these ways: (1) when award in the aggregate is specified, the low aggregate bidder will be determined by multiplying the unit price submitted on each item by the estimated quantity specified and adding the resultant extension; and (2) when item-by-item award is specified, each item and each destination will be awarded separately. In our view, the IFB contemplated the possibility of multiple awards and since this procurement is a total labor surplus area set-aside, the 50-percent rule should be applied to each separate award.

In the context of this IFB, we believe that the "contract price" refers to the total award price to each awardee. Clearly, Davis Walker is entitled to consideration for award as the apparent low bidder for all 23 subitems on which it submitted the low bid. Since Davis Walker agreed to perform more than 50 percent of the work in a labor surplus area it is eligible for award for all 23 subitems.

In sum, the award selection structure of the IFB does permit Davis Walker to compare the amount of work to be performed in a labor surplus area to the total amount of work on which it submitted the low bid in order to satisfy the 50-percent requirement. Further, we do not believe that this conclusion is contrary to the spirit and intent of the IFB's labor surplus provision.

If GSA would like its contractors to satisfy the 50-percent requirement on a group or item basis, then future solicitations should be revised by simply changing "contract price" to the "price for each Group or Item," according to GSA's intent.



Acting Comptroller General
of the United States